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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

BAY AREA PAINTERS AND TAPERS
PENSION TRUST FUND, et al.,

Plaintiffs,

v.

CRYSTAL NICOLE THOMAS, individually and
dba CALIFORNIA PROFESSIONAL PAINTING,

Defendant.

Case No.: C09-3212 MHP

**JUDGMENT PURSUANT TO
STIPULATION**

IT IS HEREBY STIPULATED by and between the parties hereto, that Judgment may be entered in the within action in favor of the Plaintiffs BAY AREA PAINTERS AND TAPERS PENSION TRUST FUND, et al. (collectively “Plaintiffs” or “Trust Funds”) and against Defendant CRYSTAL NICOLE THOMAS, individually and doing business as CALIFORNIA PROFESSIONAL PAINTING, or successor entities; (“Defendant”), as follows:

1. Defendant entered into a valid Collective Bargaining Agreement with the District Council 16 of the International Union of Painters and Allied Trades (hereinafter “Bargaining Agreement”). This Bargaining Agreement has continued in full force and effect to the present time.

2. Defendant has become indebted to the Trust Funds as follows:

November 2009	Contributions	\$4,253.75	
	20% Liquidated Damages	\$850.75	
	5% Interest (through 4/12/10)	\$59.44	
			\$5,163.94
December 2009	Contributions	\$4,108.50	
	20% Liquidated Damages	\$821.70	
	5% Interest (through 4/12/10)	\$39.96	
			\$4,970.16
January 2010	Contributions	\$4,250.00	
	20% Liquidated Damages	\$850.00	
	5% Interest (through 4/12/10)	\$25.03	
			\$5,125.03
February 2010	Contributions	\$8,351.25	
	20% Liquidated Damages	\$1,670.25	
	5% Interest (through 4/12/10)	\$13.73	
			\$10,035.23
	SUB-TOTAL		\$25,294.36
	Attorneys' Fees (12/16/08 – 4/8/10)		\$5,251.00
	Costs (12/16/08 – 10/29/09)		\$626.92
	April 5, 2010 Payment		(\$5,200.00)
	TOTAL		\$25,972.28

3. Defendant shall pay the amount of **\$25,972.28**, representing all above amounts, as follows:

(a) On or before April 20th, 2010, and no later than the 20th day of each month thereafter for a period of twelve (12) months, through and including March 20, 2011, Defendant shall pay to Plaintiffs the amount of **\$2,194.00**;

(b) These payments may be made by joint check to Defendant and Plaintiffs' Trust Funds, and if so, shall be endorsed prior to submission;

(c) Defendant shall have the right to increase the monthly payments at any time, without penalty;

(d) Payments shall be applied first to unpaid interest and then to unpaid principal. The unpaid principal balance shall bear interest at the rate of 5% per annum in accordance with Plaintiffs' Trust Agreements;

(e) Payments shall be made payable to the “*Bay Area Painters and Tapers Trust Funds*” and delivered to Michele R. Stafford at Saltzman & Johnson Law Corporation, 44 Montgomery Street, Suite 2110, San Francisco, California 94104, **to be received on or before the 20th day of each month**, or to such other address as may be specified by Plaintiffs.

4. An audit of Defendant’s records has occurred in this matter, but the report has not been completed to date. The completed report, in draft form, will be sent to Defendant for review. Defendant will be provided with ten (10) days in which to review the audit, and provide evidence to contest the findings in the event that Defendant does not agree with the total found due.

Once the report is finalized, in the event that amounts are found due, all such amounts will become part of this Judgment. In the event that this occurs, Defendant has the right to request that the term of the payment plan be extended until all amounts are paid in full.

5. Beginning with contributions due for hours worked by Defendant’s employees during the month of March 2010, to be postmarked no later than April 15, 2010 and delinquent if not received by April 30, 2010, and for every month thereafter, Defendant **shall remain current in reporting and payment of any contributions** due to Plaintiffs under the current Collective Bargaining Agreement and under all subsequent Collective Bargaining Agreements, if any, and the Declarations of Trust as amended. **Defendant shall fax a copy of the contribution report for each month, together with a copy of that payment check, to Michele R. Stafford at 415-882-9287, prior to sending the payment to the Trust Fund office. To the extent that Defendant is working on a Public Works job, or any other job for which Certified Payroll Reports are required, copies of said Reports will be faxed to Michele R. Stafford, concurrently with their submission to the general contractor, owner or other reporting agency.**

6. Failure by Defendant to remain current in reporting or payment of contributions shall constitute a default of the obligations under this agreement. Any such unpaid or late paid contributions, together with 20% liquidated damages and 5% per annum interest accrued on contributions, shall be added to and become a part of this Judgment and subject to the terms

1 herein. Plaintiffs reserve all rights available under the applicable Bargaining Agreement and
2 Declarations of Trust of the Trust Funds for collection of current and future contributions, and for
3 any additional past contributions not included herein as may be determined by Plaintiffs, pursuant
4 to employee timecards or paystubs, by audit, or other means, and the provisions of this agreement
5 are in addition thereto. Defendant specifically waives the defense of the doctrine res judicata as to
6 any such additional amounts determined as due.

7 7. Defendant shall make full disclosure of all jobs on which they are working by
8 providing Plaintiffs with an ongoing and updated list of jobs including, but not limited to, name
9 and address of job, general contractor, certified payroll if a public works job, and period.
10 **Defendant shall fax said updated list each month together with the contribution report (as**
11 **required by this Stipulation) to Michele R. Stafford at 415-882-9287.** This requirement
12 remains in full force and effect regardless of whether or not Defendant has ongoing work. In this
13 event, Defendant shall submit a statement stating that there are no current jobs.

14 8. Crystal Nicole Thomas acknowledges that she is the Sole Owner of CALIFORNIA
15 PROFESSIONAL PAINTING, and that she specifically consents to the Court's jurisdiction as
16 well as the use of a Magistrate Judge for all proceedings herein. Ms. Thomas also confirms that
17 she is personally guaranteeing the amounts due pursuant to the terms of this Stipulation and
18 further acknowledges that all affiliates, related entities and successors in interest to CALIFORNIA
19 PROFESSIONAL PAINTING and/or any subsequent entity wherein Ms. Thomas is a principal
20 shall also be bound by the terms of this Stipulation as Guarantors, and also consents to this Court's
21 jurisdiction as well as the use of a Magistrate Judge.

22 9. In the event that any check is not timely submitted or submitted by Defendant but
23 fails to clear the bank, or is unable to be negotiated for any reason for which Defendant is
24 responsible, this shall be considered to be a default on the Judgment entered. If Defendant fails to
25 submit its contribution reports, certified payroll reports (if any) and job lists or fails to comply
26 with *any* of the terms of the Stipulation herein, this too shall constitute a default.

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1 If a default occurs, Plaintiffs shall make a written demand, sent via email and/or facsimile
2 to Defendant to cure said default. Default will only be cured by the issuance of a replacement,
3 cashier's check if the default is caused by a failed check, or at the request of Plaintiffs, to be
4 delivered to Saltzman and Johnson Law Corporation within seven (7) days of the date of the
5 notice from Plaintiffs. If Defendant elects to cure said default, and Plaintiffs elect to accept future
6 payments, all such payments shall be made by cashier's check if the default is caused by a failed
7 check or upon request by Plaintiffs.

8 10. In the event the default is not cured, all amounts remaining due hereunder, as well
9 as any additional amounts due pursuant to the terms herein, shall be due and payable on demand
10 by Plaintiffs as follows:

11 (a) The entire amount of **\$25,972.28** plus interest, reduced by principal
12 payments received by Plaintiffs, but increased by any unpaid contributions then due, plus 20%
13 liquidated damages and 5% per annum interest thereon, shall be immediately due, together with
14 any additional attorneys' fees and costs and other amounts due herein;

15 (b) A writ of execution may be obtained against Defendant without further
16 notice, in the amount of the unpaid balance, plus any additional amounts under the terms herein,
17 upon declaration of a duly authorized representative of the Plaintiffs setting forth any payment
18 theretofore made by or on behalf of Defendant and the balance due and owing as of the date of
19 default. Defendant specifically consents to the authority of a Magistrate Judge for all proceedings,
20 including, but not limited to, Plaintiffs' obtaining a writ of execution;

21 (c) Defendant waives notice of entry of judgment and expressly waives all
22 rights to stay of execution and appeal. The declaration or affidavit of a duly authorized
23 representative of Plaintiffs as to the balance due and owing as of the date of default shall be
24 sufficient to secure the issuance of a writ of execution;

25 (d) Defendant shall pay all additional costs and attorneys' fees incurred by
26 Plaintiffs in connection with collection and allocation of the amounts owed by Defendant to
27 Plaintiffs under this Stipulation, regardless of whether or not there is a default herein.

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1 11. Any failure on the part of the Plaintiffs to take any action against Defendant as
2 provided herein in the event of any breach of the provisions of this Stipulation shall not be deemed
3 a waiver of any subsequent breach by the Defendant of any provisions herein.

4 12. In the event of the filing of a bankruptcy petition by Defendant, the parties agree
5 that any payments made by Defendant pursuant to the terms of this judgment, shall be deemed to
6 have been made in the ordinary course of business as provided under 11 U.S.C. Section 547(c)(2)
7 and shall not be claimed by Defendant as a preference under 11 U.S.C. Section 547 or otherwise.
8 Defendant nevertheless represents that no bankruptcy filing is anticipated.

9 13. Should any provision of this Stipulation be declared or determined by any court of
10 competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and
11 enforceability of the remaining parts, terms or provisions shall not be affected thereby and said
12 illegal, unenforceable or invalid part, term, or provision shall be deemed not to be part of this
13 Stipulation.

14 14. This Stipulation is limited to the agreement between the parties with respect to the
15 delinquent contributions and related sums enumerated herein, owed by Defendant to the Plaintiffs.
16 This Stipulation does not in any manner relate to withdrawal liability claims, if any. Defendant
17 acknowledges that the Plaintiffs expressly reserve their right to pursue withdrawal liability claims,
18 if any, against Defendant as provided by the Plaintiffs' Plan Documents, Trust Agreements
19 incorporated into their Collective Bargaining Agreement, and the law.

20 15. This Stipulation may be executed in any number of counterparts and by facsimile,
21 each of which shall be deemed an original and all of which shall constitute the same instrument.

22 16. The parties agree that the Court shall retain jurisdiction of this matter until this
23 Judgment is satisfied.

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1 17. All parties represent and warrant that they have had the opportunity to be or have
2 been represented by counsel of their own choosing in connection with entering this Stipulation
3 under the terms and conditions set forth herein, and that they enter into this Stipulation voluntarily.

4 Dated: May 8, 2010

**CRYSTAL NICOLE THOMAS, individually
and dba CALIFORNIA PROFESSIONAL
PAINTING**

7 By: _____/s/_____
8 Crystal Nicole Thomas

9 Dated: May 11, 2010

**SALTZMAN & JOHNSON
LAW CORPORATION**

11 By: _____/s/_____
12 Michele R. Stafford
13 Attorneys for Plaintiffs

14 **IT IS SO ORDERED**

15 Dated: May 12, 2010

